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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,726	09/07/2005	Anthony Khouri	061300-0718	9944
26371 7590 03/24/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER				
SORKIN, DAVID L.				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/516,726

Applicant(s)

KHOURI ET AL.

Examiner

DAVID L. SORKIN

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-25, 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-32 and 35-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 6/06, 3/08 & 2/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 26-32 and 35-44 in the reply filed on 13 February 2009 is acknowledged.

Claim Objections

2. Claim 26 should end with a period.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "removing said inner wall element one of said molds" is unclear.

Claim Rejections - 35 USC §§ 102 and 103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 35, 37, 38, 40 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Albers (US 4,391,108). Regarding claim 1, Albers ('108) discloses a drum comprising a first helical element (1) ; and a second helical element (2) joined to the first helical element, wherein the first and second helical elements form a substantially continuous layer circumferentially extending about a longitudinal axis of the drum (see Fig. 9). Regarding claim 37, the first helical element includes a blade (15). Regarding claim 38, the second helical element includes a blade (15). Regarding claim 40, a reinforcing member is within the tip of the blade (see Fig. 6). Regarding claim 43, the first helical element and the second helical element form an interior of the drum (see Fig. 9).

8. Claims 35-41, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Helmy (US 5,178,457). Regarding claim 35, Helmy ('457) discloses a mixing drum comprising a first helical element (for example, a first segment of 14, as seen in Fig. 1; see also col. 3, lines 35 "segmented"); and as second helical element (for example, a second segment of 14) joined to the first helical element, wherein the first helical element and the second helical element form a substantially continuous circumferential layer extending about a longitudinal axis of the drum (see Fig. 1). Regarding claim 36, the first and second helical elements are polymeric (see col. 2, lines 8 to 57). Regarding claim 37, the first helical element includes a blade (17,19). Regarding claim 38, the second helical element includes a blade (17,19). Regarding claim 39, the blade is helical (see Fig. 1). Regarding claim 40, a reinforcing member

(40) is in the tip of the blade. Regarding claim 41, a second substantially continuous layer (16) extends across the junction of the first and second elements. Regarding claim 43, the first and second helical element form an interior of the drum (see Fig. 1). Regarding claim 44, Helmy ('457) discloses an element (14) comprising a helical polymeric shell (21) and a polymeric blade (17,19) integrally formed with and extending from the shell.

9. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helmy (US 5,178,457) in view of Rogers WO 01/26871. The drum of Hemly was discussed above with regard to claim 41. The second layer is not disclosed to be a fiber reinforced elastomer. Rogers teaches make in a drum layer of fiber reinforced elastomer (see page 8, lines 8-15). It would have been obvious to one of ordinary skill it the are to have made the layer of fiber reinforce elastomer to prolong life and reduce weight as taught by Rogers at page 5, lines 4-11.

10. Claims 26-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rogers (WO 01/26871). Initially, it is noted that "The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature". *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Also, "the lack of physical description in a product-by-process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established. We are therefore of the opinion that

when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). Rogers discloses a vehicle mounted rotor concrete mixing drum (8) having an opening (9) at one end for receiving and/or discharge of concrete therefrom and at the other end, means for engaging a drive assembly so as to rotate the drum for mixing or discharging concrete (see page 28, line 5-10); wherein, the drum is manufactured from at least one mould using at least one plastics material; wherein the drum further includes integrally attached vanes (24) which outstand from the internal surface of the drum forming an archimedian spiral disposed such that when the drum is rotated in a first direction the concrete contents are mixed and when the drum is rotated in a second direction the contents are discharged from said drum. The patentability of a product does not depend on its method of production. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID L. SORKIN whose telephone number is (571)272-1148. The examiner can normally be reached on Mon.-Fri. 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797